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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 703/2016

MADANJIT KUMARAppellant
Through : Mr.Rajan Kumar Chourasia, Advocate
Versus

UNION OF INDIA & ANRRespondents
Through : Mr. Anil Panwar, CGSC for R-1.
Mr. Kunal Sharma, Advocate for R-2.

CORAM

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

23.12.2016

MS. G. ROHINI, CHIEF JUSTICE:

1. The unsuccessful petitioner in W.P.(C) No. 7087/2016 has filed the present appeal.
2. The said petition which was filed challenging the order dated 02.08.2016 passed by the Respondent No.2 / M/s Central Electronics Limited transferring the Petitioner/Appellant herein from Delhi to Chandigarh as Senior Manager (Regional) was dismissed by the learned Single Judge by the order under appeal dated 22.11.2016.
3. We have heard the learned counsel for both the parties.
4. The Appellant / Writ Petitioner was working with the Respondent No.2 as Senior Manager (Marketing) at Delhi. By the impugned transfer order dated 02.08.2016, he was transferred to Chandigarh. The said order was assailed in the writ petition on the ground that his daughter, aged about

8 years, has been suffering 100% mental and locomotive neurological disorder and that as per O.M No.42011/3/2014 dated 06.06.2014, he is entitled to be exempted from transfers since he is the care-giver of his disabled child. The writ petition was contested by the Respondent No.2 contending that the said Circular dated 06.06.2014 do not *ipso facto* apply unless it has been adopted by the Respondent No.2. The learned Single Judge held that the said Circular did not become mandatorily binding upon the Respondent No.2 observing:

"8. In my opinion, the argument of the petitioner that respondent no.2 is automatically bound by the circulars dated 15.2.1991 and 6.6.2014 issued by the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, is a misconceived argument inasmuch as the parent ministry or the Administrative Ministry of the respondent no.2 is the Ministry of Science and Technology and not the Ministry of Personnel, Public Grievances and Pensions. The circular dated 25.1.1991, reproduced above, shows that a separate exercise was going on to decide which of the circulars of the Ministry of Personnel would be mandatory and which of the circulars of the Ministry of Personnel would only be guidelines i.e only directory. This aspect then is further clarified in the subsequent circular dated 8.4.1991 of the Ministry of Personnel clarifying that only the presidential directives are mandatory and not the guidelines. This aspect is to be taken with the fact that the presidential directives which are mandatory have to be issued by the Administrative Ministry of the concerned public enterprise and not by the DPE viz the Ministry of Personnel. In my opinion, therefore, the circulars of the Government of India, Ministry of Personnel dated 15.2.1991 and 6.6.2014 do not at all automatically mandatorily become binding upon the respondent no.2

unless the said circulars were in the nature of presidential directives issued by the Administrative Ministry of the respondent no.2 and admittedly these circulars are not issued by the Administrative Ministry of the respondent no.2. The fact that the O.M. dated 6.6.2014 is marked to Public Sector Enterprises is only to enable a Public Sector Enterprise to decide whether or not the Public Sector Enterprise wishes to adopt or not the guidelines and marking to Public Sector Enterprises is not to make the O.M. mandatorily binding on Public Sector Enterprises. Also I do not agree with the argument urged on behalf of the petitioner relying upon para 2 of the circular dated 25.1.1991 that all circulars have to be issued by the DPE and not by the Administrative Ministry inasmuch as the last two lines of the first para of this circular dated 25.1.1991 clarifies that separately it was being decided as to which of the guidelines should be taken as mandatory and which others be treated as only guidelines, and which aspect is then clarified in the circular dated 8.4.1991 that only presidential directives are mandatory and which presidential directives are to be issued by the Administrative Ministry of the concerned Public Sector Enterprises. This is also so held by the Supreme Court in its judgment in the case of Sureshchandra Singh and Others Vs. Fertilizer Corpn. Of India Ltd. and Others (2004) 1 SCC 592 as per para 4 of this judgment and which para 4 reads as under:-

“4. By OMs dated 25-1-1991 and 8-4-1991, the Ministry of Programme Implementation and Department of Public Enterprises made it clear that all instructions/guidelines issued by the Government of India would be of two kinds: (a) directives issued in the name of President of India, and (b) guidelines. Directives would be issued by the Administrative Ministry in the name of the

President while all other instructions issued by the Department of Public Enterprises or by the Administrative Ministry are only advisory which the Board of Directors of the public sector undertakings concerned may in their discretion adopt or not for reasons to be recorded in writing.”

5. Assailing the said order, Mr. Rajan Kumar Chourasia, the learned counsel appearing for the Appellant submitted that the learned Single Judge failed to appreciate that the O.M dated 06.06.2014 pertaining to exemption of the Government Servants from transfer is applicable to all departments including Central Public Sector Undertaking. It is also contended that a Central Public Sector Enterprise (CPSE), which is not willing to adopt DPE's guidelines, had to seek exemption from its Administrative Ministry/Department and the Respondent No.2 did not seek any such exemption. The further contention is that the reliance placed upon the Circular dated 25.01.1991 and Circular dated 08.04.1991 issued by the Ministry of Personnel, Public Grievances and Pensions by the learned Single Judge was erroneous.

6. On the converse, learned counsel for the Respondents submitted that the disability of the daughter of the appellant was not covered in the Office Memorandum dated 15.02.1991 and 06.06.2014. It was further contended that there was a meeting dated 21.11.2016 wherein reasons have been stated for not adopting the guidelines given in the DOPT OM dated 06.06.2014.

7. For proper appreciation of the rival submissions, it would be appropriate to refer to the Circular dated 15.02.1991 and Circular dated 06.06.2014 of the Government of India, Ministry of Personnel, Public Grievances & Pensions which are as under:

New Delhi, 15th February, 1991

OFFICE MEMORANDUM

Subject: Posting of Government employees who have mentally retarded children

The undersigned is directed to say that there has been a demand that an **employed parent of a mentally retarded child should be given posting at a place of his/her choice**. This demand has been made on the plea that facilities of medical aid and education of such children are not available everywhere. Also looking after such children does require special care and patience and is expensive. Hence some concessions from the Government at least in matters of posting at a place of choice is called for.

2. The matter has been examined. Considering that the facilities for medical help and education of mentally retarded children may not be available at all stations, a choice in the place of posting is likely to be of some help to the parent in taking care of such a child. While administratively it may not be possible in all cases to ensure posting of such an employee at a place of his/her choice, Ministries/Departments are requested to take a sympathetic view on the merits of each case and accommodate such requests for posting to the extent possible.

Sd/-

To
All Ministries/Departments."

Dated the 6th June, 2014

OFFICE MEMORANDUM

Sub: Posting of Government employees who have differently abled dependents-reg.

There has been demand that a Government employee who is a care giver of the disabled child may not have to suffer due to displacement by means of routine

transfer/rotational transfers. This demand has been made on the ground that a Government employee raises a kind of support system for his/her disabled child over a period of time in the locality where he/she resides which helps them in the rehabilitation.

2. The matter has been examined. Rehabilitation is a process aimed at enabling persons with disabilities to reach and maintain their optimal physical, sensory, intellectual, and psychiatric or a social functional level. The support system comprises of preferred linguistic zone, school/academic level, administration, neighbours, tutors/special educators, friends, medical care including hospitals, therapists and doctors, etc. Thus, rehabilitation is a continuous process and creation of such support system takes year together.

3. Considering that the Government employee who has disabled child serve as the main care giver of such child, any displacement of such Government employee will have a bearing on the systemic rehabilitation of the disabled child since the new environment/set up could prove to be a hindrance for the rehabilitation process of the child. **Therefore, a Government servant who is also a care giver of disabled child may be exempted from the routine exercise of transfer/rotational transfer subject to the administrative constraints. The word 'disabled' includes (i) blindness or low vision (ii) hearing impairment (iii) locomotor disability or Cerebral Palsy (iv) leprosy cured (v) mental retardation (vi) mental illness and (vii) multiple disabilities.**

4. Upbringing and rehabilitation of disabled child requires financial support. Making the Government employee to choose voluntary retirement on the pretext of routine transfer/rotation transfer would have adverse impact on the rehabilitation process of the disabled child....."

8. A perusal of the above circulars shows that medical help and education of mentally retarded children may not be available at all stations

and thus a sympathetic view must be given to each case to accommodate the requests from the employees to exempt from the exercise of transfer/rotational transfer. However, it is made clear in the Circulars itself that such exemption shall be subject to the administrative constraints. The material available on record shows that the Respondent No.2 had taken a conscious decision for transferring the Appellant to Chandigarh after taking into account the relevant Rules governing their department as well as circulars dated 15.02.1991 and 06.06.2014.

9. The relevant portion of the extract of minutes of 194th of Board of Director of Central Electronics / Respondent No.2 held on 21.11.2016 is as under:

“....the company itself is in a very critical position at the moment with huge accumulated losses and has not even been able to pay salary arrears of 1997 pay revision yet. The company is also being considered for disinvestment by the Government. In this situation, when its very survival is at stake, the Company has adopted an aggressive growth policy with ambitious targets for exponential growth, to fully utilize the opportunities available in the market. The policy has started showing results and the Company has started to re-establish itself on a much expanded base and is looking to expand its presence across the country. As such, this is a crucial juncture for the Company which requires to have all hands on the deck and fully utilize all resources for meeting its growth plan/targets. At this juncture, when the Company is looking for expanding its presence across the country, it needs to post employees to various offices as per functional requirements of each office. In view of the present situation of the Company, the Board decided and approved that, it is not possible for the Company to adopt the guidelines given in the DOPT OM dated 6th

June 2014 & circulated by DPE Vide OM No. 6(9)/2014/(SC/ST CELL dated 27th June 2014. However, in future, when the company has adequately large manpower and the new offices are fully stabilized, the decision may be reviewed by the management.....”

10. In the light of the reasons recorded by the Board of Directors in the minutes of the meeting dated 21.11.2016, the learned Single Judge held that the Respondent No.2 cannot be found at fault for not adopting the Circular dated 06.06.2014. Para 10 of the order under appeal wherein the learned Single Judge has recorded the reasons therefor may be reproduced hereunder for ready reference:

“10. I also note that there is really no issue of grave miscarriage of justice or grave prejudice to the petitioner because the issue with respect to petitioner's daughter being shifted from Delhi to Chandigarh is only a onetime action. It is not as if that the petitioner will have to repeatedly change the station of his daughter because petitioner is married and (he has a wife as per the answer to Court query) the wife of the petitioner is a housewife who takes care of the child of the petitioner. Therefore, shifting from Delhi to Chandigarh of the petitioner and his family including his child who is mentally retarded and having locomotor disability, cannot be such a ground for quashing of the impugned order transferring the petitioner as the shifting of the petitioner's child, as stated above, will only be a onetime action with the fact that Chandigarh is the capital of Punjab and Haryana, and which has sufficient medical facilities.

11. In view of the above, I do not find any merits in this writ petition, and the same is therefore dismissed, leaving the parties to bear their own costs.”

11. As rightly observed by the learned Single Judge, the Respondent No.2 appears to be in a bad financial condition and the transfer of the Appellant / Writ Petitioner to Chandigarh was apparently to expand the business by setting up a fresh office at Chandigarh. We, therefore, do not find any justifiable reason to differ from the conclusion arrived at by the learned Single Judge. We are also in consonance with the view taken by the learned Single Judge that the Appellant will not have to repeatedly change the station of his daughter and that the impugned transfer is only a one-time action and that Chandigarh is a city with all sufficient medical facilities to take care of the appellant's daughter.

12. For the aforesaid reasons, the order under appeal warrants no interference.

13. Accordingly, the appeal is dismissed.

CHIEF JUSTICE

SANGITA DHINGRA SEHGAL, J.

DECEMBER 23, 2016

gr/pk